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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 17

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL # 7000 1670 0002 9182 9556
RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA File No: 2R-00-R9

Michael E. Boyd
Californians for Renewable Energy

(b) (6) Privacy

Re: Partial Acceptance of Administrative Complaint

Dear Mr. Boyd:

On April 17, 2000, you filed a complaint with the U.S. Environmental Protection Agency, Office of Civil Rights, on behalf of CALifornians for Renewable Energy, Inc. The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7 by the California Energy Commission, Bay Area Air Quality Management District and the California Air Resources Board in their approval of the Pittsburg District Energy Facility (CEC docket 98-AFC-1) and the Delta Energy Center (CEC docket 98-AFC-3). The complaint also alleges that discriminatory effects resulted from the review and oversight of the Pittsburg District Energy Facility and Delta Energy Center projects by the U.S. EPA Region 9 Air Division and the review of the PSD permit for the Delta Energy Center, docket number PSD-99-76, by the Environmental Appeals Board. The purpose of this letter is to inform you that your complaint has been partially accepted for investigation by EPA.

In the complaint you specifically allege that actions by recipients relative to the Pittsburg District Energy Facility and Delta Energy Center projects will inflict "disparate impacts from criteria pollutants" on low income and minority populations which "already suffer elevated levels of occurrences of asthma, and breast cancer, along with increased human mortality attributable to particulate matter exposure." You also allege that the Pittsburg community "experience[s] these affects disparately in comparison to non-minority non-low income populations within Contra Costa Community and in the surrounding counties.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). Your complaint meets all of the jurisdictional requirements in 40 C.F.R. Part 7 with respect to CARB and BAAQMD. First, your complaint is in writing. 40 C.F.R. §

7.120(b)(1). Second, you allege that the approval of the Pittsburg District Energy Facility CEC and the Delta Energy Center will cause disparate impacts in violation Part 7 as described above. 40 C.F.R. § 7.120(b)(1). Third, the alleged discriminatory acts occurred on October 25, 1999, the approval date of Pittsburg, and March 22, 2000, the approval date of Delta, both of which are within 180 days of the date on which your complaint was filed with EPA. 40 C.F.R. § 7.120(b)(2). Fourth, CARB and BAAQMD were recipients of EPA financial assistance at the time of the alleged discriminatory act. 40 C.F.R. § 7.15. Based on these facts, your complaint is accepted for investigation with respect to the allegations described above against CARB and BAAQMD.

Your complaint does not meet the jurisdictional requirements in 40 C.F.R. Part 7 with respect to CEC, EPA Region 9 Air Division and the EAB. The CEC is not a recipient of EPA funding and neither the EPA (including its Regional Offices), nor the EAB are subject to Title VI or Part 7. Based on these facts, your allegations against the CEC, EPA Region 9 Air Division and the EAB are rejected.

EPA's Title VI regulations provide that OCR must attempt to resolve complaints informally whenever possible (40 C.F.R. § 7.120(d)(2)). Accordingly, OCR will discuss, at any point during the process, offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders. At this time, your complaint is already undergoing an informal resolution process with Ms. Joann Asami. Please contact Ms. Asami at (415) 972-3929 if you have any questions regarding this process.

If you have any questions, please contact Eva Hahn by phone at (202) 564-8186, or by mail to the U.S. EPA, Office of Enforcement and Compliance Assurance (Mail Code 2201A), Title VI Task Force, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", with a long horizontal flourish extending to the right.

Karen D. Higginbotham
Acting Director

cc: Steve Larson
Executive Director
California Energy Commission
1516 Ninth St.
Sacramento, CA 95814

Ellen Garvey
Air Pollution Control Officer
Bay Area Quality Management District
939 Ellis St.
San Francisco, CA 94109-7799

Alan Lloyd
Chairman
California Air Resources Board
2020 L St.
Sacramento, CA 95814

Jeffrey Kolin
City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Rafael DeLeon, Associate General Counsel
Office of General Counsel (MC 2399A)

Sylvia Lowrance, Acting Assistant Administrator
Office of Enforcement and Compliance Assurance (MC 2201A)

Barry Hill, Director
Office of Environmental Justice (MC 2201A)

Wayne Nastri, Regional Administrator
EPA Region 9

Joann Asami, Title VI Coordinator
EPA Region 9

Gail Ginsberg, Chair
Title VI Task Force (MC 2201A)

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CONCURRENCES	
SYMBOL	(b) (6) Privacy
SURNAME	
DATE	